

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THE WATTLES COMPANY, a Washington  
corporation,

Plaintiff,

v.

SCOTTSDALE INSURANCE COMPANY;  
et al.,

Defendants.

Case No. 3:14-CV-05097-RBL

TIG INSURANCE COMPANY'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT DISMISSING POLICY  
NO. T731343096

NOTE ON MOTION CALENDAR:  
FRIDAY, SEPTEMBER 12, 2014

**I. INTRODUCTION & RELIEF REQUESTED**

COMES NOW Defendant TIG Insurance Company ("TIG"), by and through its counsel of record, Lane Powell PC, and hereby moves for partial Summary Judgment pursuant to Fed. R. Civ. P. 56. All claims asserted by Plaintiff The Wattles Company ("Wattles") against TIG under policy no. T731343096 must be dismissed with prejudice and without leave to amend because the policy does not cover the real property at issue in this lawsuit.

**II. STATEMENT OF FACTS**

This is an insurance coverage dispute. Wattles owns real property located at 1901 – 2005 Fryar Avenue in Sumner, Washington (the "Sumner Property"). (Dkt. 3 at ¶ 1.) Between 1986 and 2012, Wattles allegedly purchased property insurance policies covering the Sumner Property from each of the Insurer-Defendants. (*Id.*) Wattles alleges that, during this period, the Sumner Property experienced damage and contamination related to the presence of acid and

TIG'S MOTION FOR PARTIAL SUMMARY JUDGMENT  
DISMISSING POLICY NO. T731343096 - 1  
Case No. 3:14-CV-05097-RBL

LANE POWELL PC  
1420 FIFTH AVENUE, SUITE 4200  
P.O. BOX 91302  
SEATTLE, WA 98111-9402  
206.223.7000 FAX: 206.223.7107

other chemicals used in a non-party tenant's operations at the Sumner Property. Wattles specifically alleges that the acid damaged wood framing members, concrete walls, and concrete floors. (*Id.* at ¶¶ 22-23.) Wattles further alleges that it submitted a Notice of Loss to the Insurer-Defendants, seeking coverage for the first-party property damage. At this time, the Insurer-Defendants have not accepted coverage for Wattles' insurance claim.

**A. TIG Issued Commercial Property Insurance Policies to Wattles.**

Between 1988 and 1994, TIG issued the following property insurance policies to Wattles:

- TIG policy number T730305511, effective from November 1 1988 to November 1, 1989;
- TIG policy number T730797373, effective from November 1, 1989 to November 1, 1990;
- TIG policy number T730812242, effective from November 1, 1990 to November 1, 1991;
- TIG policy number T730812242, effective from November 1, 1991 to November 1, 1992; and
- TIG policy number T731343096, effective from November 1, 1993 to November 1, 1994.

(Dkt. 3 at ¶ 14.) The Building and Personal Property Coverage Form states that TIG "will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss." (*See* Declaration of Jennifer K. Sheffield ("Sheffield Decl."), Ex. A at TIG 100375.) The coverage form defines "Covered Property" in relevant part as "Building, meaning the building or structure described in the Declarations". (*Id.*)

The declarations pages for the Commercial Property Coverage section of TIG policy number T731343096 list the following properties:

- 1203 E. D Street, Tacoma, Washington  
Frame – Office
- 2367 Lincoln Avenue, Tacoma, Washington  
Masonry - Warehouse

- 1920-1924-1926 Port of Tacoma Road, Tacoma, Washington  
Masonry – Paper Goods Mfg.

(See Sheffield Decl., Ex. A at TIG 100328-330.) Notably, the declarations pages do not list the Sumner Property. (*Id.*)

**B. Although TIG Policy No. T731343096 Does Not List The Sumner Property as a Covered Property, Wattles Refused to Dismiss its Claims Against the Policy.**

On January 17, 2014, in response to Wattles' Notice of Loss, TIG notified Wattles that TIG policy number T731343096 does not identify the Sumner Property or any property located in Sumner, Washington as a covered property. (Sheffield Decl., Ex. B at TIG 100499.) TIG informed Wattles that it was not entitled to coverage for the Sumner Property under policy number T731343096. (*Id.*)

After Wattles filed suit against the Insurer-Defendants, TIG asked Wattles to voluntarily dismiss its claims against TIG under policy number T731343096. (Sheffield Decl., Ex. C.) Again, TIG pointed out that the Sumner Property is not scheduled on the declarations pages for the Commercial Property Coverage section of policy number T731343096. (*Id.*) The Sumner Property was listed as a Covered Property under the Commercial Property Coverage section of the Westchester Surplus Lines Insurance Co. policy for the same policy period. (*Id.*; see also Dkt. 37 at 2.) TIG provided Wattles with a Stipulated Motion and Order of Dismissal for its approval without an award of costs to TIG. (Sheffield Decl., Ex. C.) Wattles did not respond to TIG's request for dismissal. (Sheffield Decl. at ¶ 6.)

### **III. ISSUE STATEMENT**

Whether Wattles' claims against TIG under TIG policy no. T731343096 should be dismissed with prejudice and without leave to amend where the Sumner Property is not listed as a Covered Property.

**Answer: Yes.**

### **IV. EVIDENCE RELIED UPON**

This motion relies upon the Declaration of Jennifer K. Sheffield and the exhibits attached thereto; and the pleadings and papers on file in this action.

**V. LEGAL ARGUMENT**

**A. Summary Judgment Standard.**

On a motion for summary judgment under Federal Rule of Civil Procedure 56, the court must draw all inferences from the admissible evidence in the light most favorable to the non-moving party. *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000). Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party must initially show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The opposing party must then show a genuine issue of fact for trial. *Matsushita Elect. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party must present probative evidence to support its claim or defense. *Intel Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991).

**B. Wattles Is Not Entitled to Coverage Under TIG Policy Number T731343096.**

“Interpretation of an insurance contract is a question of law.” *Quadrant Corp. v. American States Ins. Co.*, 154 Wn.2d 165, 171, 110 P.3d 733 (2005). Washington courts “consider the policy as a whole, and we give it a ‘fair, reasonable, and sensible construction as would be given to the contract by the average person purchasing insurance.’” *Id.* (quoting *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 666, 15 P.3d 115 (2000)). “Most importantly, if the policy language is clear and unambiguous, we must enforce it as written; we may not modify it or create ambiguity where none exists.” *Id.*

Based on the clear and unambiguous terms of TIG policy number T731343096 and the record before this Court, Wattles is not entitled to coverage for damage to the Sumner Property. TIG policy number T731343096 plainly states that TIG will provide coverage only for “direct physical loss of or damage to Covered Property at the premises described in the Declarations”. (Sheffield Decl., Ex. A at TIG 100375 (emphasis added).) “Covered Property” is defined in relevant part as “Building, meaning the building or structure described in the Declarations”. (*Id.*) Importantly, the declarations pages to TIG policy number T731343096 do not list the

1 Sumner Property. (*Id.*, Ex. A at TIG 100328-330.) Because the Sumner Property is not  
2 scheduled on the declarations pages, Wattles is not entitled to coverage under TIG policy  
3 number T731343096. Accordingly, Wattles' claims against TIG under policy number  
4 T731343096 should be dismissed.

5 **VI. CONCLUSION**

6 For the foregoing reasons, TIG asks that the Court grant summary judgment and dismiss  
7 Wattles' claims against TIG under policy number T731343096 with prejudice and without  
8 leave to amend.

9  
10 DATED this 21st day of August, 2014.

11  
12  
13 LANE POWELL PC

14  
15 By: /s/ Jennifer K. Sheffield

16 David M. Schoeggl, WSBA No. 13638  
17 Stephania C. Denton, WSBA No. 21920  
18 Jennifer K. Sheffield, WSBA No. 41929  
19 Attorneys for Defendant TIG Insurance Company  
20 Lane Powell PC  
21 1420 Fifth Ave., Suite 4200  
22 Seattle, WA 98111  
23 Telephone: (206) 223-7000  
24 Facsimile: (206) 223-7107  
25 schoeggld@lanepowell.com  
26 dentons@lanepowell.com  
27 sheffieldj@lanepowell.com

**CERTIFICATE OF SERVICE**

I certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

<p><i>Attorneys for Plaintiff The Wattles Company:</i></p> <p>Devon M. Thurtle Anderson Brent J. Hardy Heffernan Law Group PLLC 1201 Market Street Kirkland, WA 98033 425-284-1150 <a href="mailto:devon@heffernanlawgroup.com">devon@heffernanlawgroup.com</a> <a href="mailto:brent@heffernanlawgroup.com">brent@heffernanlawgroup.com</a> <a href="mailto:jaimie@heffernanlawgroup.com">jaimie@heffernanlawgroup.com</a></p>	<p><i>Attorneys for Defendant Crum &amp; Forster Specialty Insurance Company:</i></p> <p>Alfred E. Donohue Wilson Smith Cochran &amp; Dickerson 901 Fifth Avenue, Suite 1700 Seattle, WA 98164 206-623-4100 <a href="mailto:donohue@wscd.com">donohue@wscd.com</a> <a href="mailto:Obrien@wscd.com">Obrien@wscd.com</a> <a href="mailto:strelyuk@wscd.com">strelyuk@wscd.com</a> <a href="mailto:Sinclair@wscd.com">Sinclair@wscd.com</a></p>
<p><i>Attorneys for Defendant Landmark American Insurance Company:</i></p> <p>Thomas J. Braun Curt H. Feig Nicoll Black &amp; Feig PLLC 1325 Fourth Avenue, Suite 1650 Seattle, WA 98101 206-838-7555 <a href="mailto:tbraun@nicollblack.com">tbraun@nicollblack.com</a> <a href="mailto:cfeig@nicollblack.com">cfeig@nicollblack.com</a> <a href="mailto:ksmith@nicollblack.com">ksmith@nicollblack.com</a> <a href="mailto:jhendricks@nicollblack.com">jhendricks@nicollblack.com</a></p>	<p><i>Attorneys for Defendant Northfield Insurance Company:</i></p> <p>James T. Derrig Law Office of James T. Derrig 14419 Greenwood Avenue N, Suite A-372 Seattle, WA 98133 206-414-7228 <a href="mailto:eservice.derriglaw@me.com">eservice.derriglaw@me.com</a> <a href="mailto:jim.derriglaw@me.com">jim.derriglaw@me.com</a></p>
<p><i>Attorneys for Defendant Admiral Insurance Company</i></p> <p>John Bennett Daniel R. Bentson Bullivant Houser Bailey PC 1700 Seventh Avenue, Suite 1810 Seattle, WA 98101-1397 Tel: 206-292-8930 <a href="mailto:John.bennett@bullivant.com">John.bennett@bullivant.com</a> <a href="mailto:Dan.bentson@bullivant.com">Dan.bentson@bullivant.com</a> <a href="mailto:Trask.russill@bullivant.com">Trask.russill@bullivant.com</a></p>	<p><i>Attorneys for Defendant AGCS Marine Insurance Company &amp; Fireman's Fund Insurance Company:</i></p> <p>Joseph D. Hampton Daniel L. Syhre Betts Patterson &amp; Mines, P.S. One Convention Place, Suite 1400 701 Pike Street Seattle, WA 98101-3927 Tel: 206-292-9988 <a href="mailto:jhampton@bpmlaw.com">jhampton@bpmlaw.com</a> <a href="mailto:dsyhre@bpmlaw.com">dsyhre@bpmlaw.com</a> <a href="mailto:dmarsh@bpmlaw.com">dmarsh@bpmlaw.com</a> <a href="mailto:kfortune@bpmlaw.com">kfortune@bpmlaw.com</a> <a href="mailto:aklein@bpmlaw.com">aklein@bpmlaw.com</a></p>

TIG'S MOTION FOR PARTIAL SUMMARY JUDGMENT  
DISMISSING POLICY NO. T731343096 - 6  
Case No. 3:14-CV-05097-RBL

121711.0002/6092320.2

LANE POWELL PC  
1420 FIFTH AVENUE, SUITE 4200  
P.O. BOX 91302  
SEATTLE, WA 98111-9402  
206.223.7000 FAX: 206.223.7107

*Attorneys for Defendants Westchester Fire Insurance Company and Westchester Surplus Lines Insurance Company*

Scott M. Stickney  
Rob Levin  
Wilson Smith Cochran Dickerson  
901 Fifth Avenue, Suite 1700  
Seattle, WA 98164  
Tel: 206-623-4100  
[stickney@wscd.com](mailto:stickney@wscd.com)  
[ossenkop@wscd.com](mailto:ossenkop@wscd.com)  
[Levin@wscd.com](mailto:Levin@wscd.com)  
[phares@wscd.com](mailto:phares@wscd.com)  
[Obrien@wscd.com](mailto:Obrien@wscd.com)  
[strelyuk@wscd.com](mailto:strelyuk@wscd.com)  
[jory@wscd.com](mailto:jory@wscd.com)

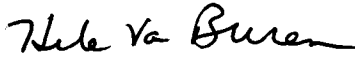
*Attorneys for Defendant Arrowood Surplus Lines Insurance Company f/k/a Royal Surplus Lines Insurance*

Russell C. Love  
Paul F. Cane  
Thorsrud Cane & Paulich  
1325 Fourth Avenue, Suite 1300  
Seattle, WA 98101  
Tel: 206-386-7755  
[rlove@tcplaw.com](mailto:rlove@tcplaw.com)  
[pcane@tcplaw.com](mailto:pcane@tcplaw.com)  
[mhanshaw@tcplaw.com](mailto:mhanshaw@tcplaw.com)

*Attorneys for Defendant Scottsdale Insurance Company*

Geoff Bridgman  
Tracy N. Grant  
Ogden Murphy Wallace, P.L.L.C.  
901 Fifth Avenue, Suite 3500  
Seattle, WA 98164-2008  
Tel: 206-447-0215  
[gbridgman@omwlaw.com](mailto:gbridgman@omwlaw.com)  
[tgrant@omwlaw.com](mailto:tgrant@omwlaw.com)  
[mwhipple@omwlaw.com](mailto:mwhipple@omwlaw.com)  
[tthompson@omwlaw.com](mailto:tthompson@omwlaw.com)  
[sbordeaux@omwlaw.com](mailto:sbordeaux@omwlaw.com)

DATED August 21, 2014.

  
\_\_\_\_\_  
Helen Van Buren